

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

**MANE FALETOGO, individually,**

Plaintiff,

No. 19-CV-00247-TSZ

VS.

CITY OF SEATTLE, a municipal corporation,  
and OFFICER JARED KELLER,

### Defendants.

**DEFENDANT'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' AMENDED COMPLAINT**

Defendant City of Seattle, by and through its attorneys of record, submit its Answer and Affirmative Defenses to Plaintiffs' Amended Complaint as follows:

## I. PARTIES

1. Defendant lacks sufficient information to admit or deny the allegations set forth in this Paragraph, and therefore denies them.
  2. This paragraph states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT -  
1 (19-CV-00247-TSZ)

**Peter S. Holmes**  
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(206) 684-8200

## **II. STATEMENT OF FACTS**

3. Defendant denies this paragraph as phrased. Defendant admits that Iosia Faletogo was 36 years old. Defendant admits that an interaction occurred between Mr. Faletogo and Seattle Police Department (“SPD”) officers near the intersection of Highway 99 and 96<sup>th</sup> Street North on Monday, December 31, 2018, starting at approximately 5:00 pm. Defendant denies the remaining allegations of this paragraph.
  4. Defendant admits that Mr. Faletogo conducted an illegal lane change and that the registered owner of the vehicle Mr. Faletogo was driving had a suspended license.
  5. Defendant admits that Mr. Faletogo exited the vehicle running and that six SPD officers chased him. Defendant denies the remaining allegations of this paragraph.
  6. Defendant admits that Mr. Faletogo ran across Highway 99 and down a side street and that Mr. Faletogo was taken to the ground on the south sidewalk of 96<sup>th</sup> Street N. Defendant admits that Mr. Faletogo resisted arrest.
  7. Defendant admits that Mr. Faletogo possessed a gun; that officers saw that Mr. Faletogo possessed a gun; and that officers ordered Mr. Faletogo to release the gun. Defendant denies the remaining allegations of this paragraph.
  8. Defendant admits that officers warned Mr. Faletogo by yelling “Drop the gun or you’re going to get shot” and “You’re going to get shot!” Defendant admits that Mr. Faletogo continued to struggle. Defendant admits that Mr. Faletogo possessed a gun during the physical struggle and that, at one point, the gun was on the ground beside Mr. Faletogo and within Mr. Faletogo’s reach. Defendant denies the remaining allegations of this paragraph.
  9. Defendant admits that an officer yelled “He’s reaching for it” referring to Mr. Faletogo’s gun. Defendant denies the remaining allegations of this paragraph.

1 10. Defendant admits that Mr. Faletogo was shot by Officer Keller on December 31, 2018.

2 11. Defendant admits that Officer Keller was wearing a body-worn video camera. Defendant  
3 denies the remaining allegations of this paragraph.

4 12. Defendant lacks sufficient information to admit or deny the allegations set forth in this  
5 Paragraph, and therefore denies them.

6 13. Defendant admits that Chief Best referred the incident to the Washington State Patrol to  
7 conduct an independent investigation.

8 14. This paragraph states legal conclusions to which no response is required.

9 15. Defendant admits that Plaintiff filed this lawsuit and denies the remaining allegations of this  
10 paragraph.

11 **III. FEDERAL LOSS OF CONSORTIUM CLAIM: 42 U.S.C. 1983**

12 16. This paragraph states legal conclusions to which no response is required.

13 17. Defendant denies that it engaged in the alleged acts and therefore denies the allegations and  
14 claims in this paragraph. Defendant admits that Mane Faletogo filed this lawsuit and brings  
15 claims against the City.

16 18. Defendant denies that it engaged in the alleged acts and therefore denies the allegations and  
17 claims in this paragraph.

18 1. Defendant admits the United States Department of Justice, Civil Rights Division and  
19 the United States Attorney's Office of the Western District of Washington (collectively,  
20 "DOJ") conducted a joint investigation of SPD and that DOJ reported its investigative  
21 findings in a December 2011 letter. Defendant admits that the remaining allegations in  
22 this paragraph accurately describe one of the findings in DOJ's December 2011 letter.

2. Defendant admits that DOJ's December 2011 letter stated, "SPD engages in a pattern or practice of using unnecessary or excessive force, in violation of the Fourth amendment to the United States Constitution. Deficiencies in SPD's training, policies, and oversight with regard to the use of force contribute to the constitutional violations."
  3. Defendant admits that this paragraph accurately describes one of the findings in DOJ's December 2011 letter.
    - a. Defendant admits that this paragraph accurately describes one of the findings in DOJ's December 2011 letter.
    - b. Defendant admits that this paragraph accurately describes one of the findings in DOJ's December 2011 letter.
    - c. Defendant admits that this paragraph accurately describes one of the findings in DOJ's December 2011 letter.
  4. Defendant admits that this paragraph accurately describes one of the findings in DOJ's December 2011 letter.
  5. Defendant admits that this paragraph accurately describes one of the findings in DOJ's December 2011 letter.

Defendant admits that this paragraph accurately describes one of the findings in DOJ's December 2011 letter.

Defendant admits that DOJ's December 2011 letter contained recommendations.

  1. Defendant admits that this paragraph accurately describes one of the recommendations in DOJ's December 2011 letter.
  2. Defendant admits that this paragraph accurately describes one of the recommendations in DOJ's December 2011 letter.

- 1           3. Defendant admits that this paragraph accurately describes one of the recommendations  
2                 in DOJ's December 2011 letter.
- 3       21. Defendant denies the allegations in the first sentence of this paragraph. Defendant admits  
4                 the allegations in the second sentence of this paragraph. As to the third sentence, Defendant  
5                 admits that the City has entered into a two-year period during which the reforms must be  
6                 maintained but denies the remaining allegations in the third sentence. The Defendant admits  
7                 the allegations in the fourth sentence of this paragraph.
- 8           1. Defendant admits that this paragraph accurately describes a requirement of  
9                 paragraph 70(a) of the Consent Decree.
- 10          2. Defendant admits this paragraph accurately describes a requirement of paragraph  
11                 70(b) of the Consent Decree.
- 12          3. Defendant admits that this paragraph accurately describes a requirement of  
13                 paragraph 70(c) of the Consent Decree.
- 14          4. Defendant admits that this paragraph accurately describes a requirement of  
15                 paragraph 70(e) of the Consent Decree.
- 16          5. Defendant admits that this paragraph accurately describes a requirement of  
17                 paragraph 70(f) of the Consent Decree.
- 18       22. Defendant denies the allegations in the first sentence of this paragraph. As to the second  
19                 sentence of this paragraph, Defendant admits that SPD's current Use of Force Policy states  
20                 "When safe and feasible under the totality of the circumstances, officers shall attempt to  
21                 slow down or stabilize the situation so that more time, options and resources are available  
22                 for incident resolution." As to the third sentence of this paragraph, the phrase "SPD's force"  
23                 is vague and, as such the Defendant lacks sufficient knowledge to admit or deny, and so

denies. As to the fourth sentence of this paragraph, the phrase “these use of force policies” is vague and, as such the Defendant lacks sufficient knowledge to admit or deny, and so denies.

23. Defendant denies the allegations in this paragraph.

## **AFFIRMATIVE DEFENSES**

1. Plaintiff fail to state a claim upon which relief may be granted.

2. The City, a municipal corporation, and its agencies, are immune from liability for prejudgment interest on tort judgments and are immune from punitive damages.

3. Defendant has not violated any rights, privileges or immunities under the Constitution or law of the United States or the State of Washington, or any political subdivision thereof.

4. Plaintiffs' claims may be barred, in whole or in part, by governmental immunity for discretionary, policy making, and/or judgmental functions and decisions.

5. Mr. Faletogo was engaged in a felony at the time of the occurrence causing his death and the felony was a proximate cause of his death and the alleged injuries/damages sustained by the Plaintiffs. Accordingly, Plaintiffs' claims under Washington law are barred by RCW 4.24.420.

6. Any damages suffered by Plaintiff were caused in whole or in part by Mr. Faletogo's own conduct or fault.

7. Plaintiff has failed to take reasonable steps to mitigate damages.

8. To the extent the jury finds Defendant negligent, Mr. Faletogo was negligent in whole or in part for his claimed damages.

9. Defendant reserves the right to amend this Answer to assert additional affirmative defenses, counterclaims, or cross-claims as may be appropriate based upon future discovery. Nothing contained in this Answer should be construed as a waiver of any such additional defenses.

## **PRAAYER FOR RELIEF**

Plaintiffs' prayer for relief requires no response.

DATED this 21st day of May, 2019.

PETER S. HOLMES  
Seattle City Attorney

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*Attorney for Defendant City of Seattle*

## **CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Lincoln C. Beauregard  
Amanda M. Searle  
Connelly Law Offices, PLLC  
Tacoma, WA 98403  
*[Attorneys for Plaintiff]*

s/ Kerala T. Cowart  
Kerala T. Cowart, Assistant City Attorney

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